IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 11796 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

MANISHKUMAR RAMESHBHAI SHAH - Applicant(s)
Versus
THE STATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :

MR PRAKASH K JANI for Applicant(s) : 1,
MR MR MENGDEY, APP for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2,
MR.HIREN M MODI for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 23/10/2007

ORAL JUDGMENT

The petitioner herein has prayed for quashing of criminal complaint bearing C.R.No.122/05 filed before Visnagar Police Station.

2. Facts which are seriously not in dispute are as follows:

3. The petitioner was a guarantor in one loan given by the complainant bank in favour of one Rajendra Granite Private Ltd. of Rs.20 lacs. The loan amount was not repaid as per the terms of the loan between the parties. The Bank, therefore, filed a Lavad Suit before the Board of Nominees. It is not in dispute that the Lavad Court passed a decree in favour of the Bank. Apparently,the petitioner herein deposited a sum of Rs.4 lacs with the Bank on 3.5.2005 to discharge part of the liability towards loan. In the meantime, he had also written a letter dated 20th February 2004 to the Bank stating that sufficient property of the principal borrower is in the bank which would satisfy the demand of the Bank.

4. On 1.5.05, the Bank filed complaint against all borrowers who had secured the loan in excess of Rs.10 lacs who failed to discharge the liability. Against large number of people, therefore, one single complaint came to be filed making allegations to the effect that disbursement of loans were made without proper security and even guarantors did not offer sufficient security to cover the risk of the Bank. In the complaint, it is therefore, the case of the Bank that such persons together have defrauded the bank to the tune of an amount in excess of Rs.8 crores. Significantly, so far as the

present petitioner is concerned, his name figures at Sr.No.30 of the annexure to the complaint giving detailed particulars of the principal borrowers, guarantors and the loan transactions. It is also not in dispute that the complainant bank sold some of the properties of the principal borrowers which fetched a total sale price of Rs.67,16,500/-. Towards part payment thereof, an amount of Rs.20 lacs was deposited by the purchaser on 8th March 2007 and another sum of Rs.14 lacs was deposited on 30th April 2007.

5. On the basis of these undisputed facts, counsel for the petitioner submitted that the petitioner cannot be held criminally liable and that the complaint against the petitioner should be quashed. It was contended that the entire transaction was one of civil nature and therefore, criminal complaint cannot be sustained. It was further submitted that in any case, the entire liability of the bank is paid up and the guarantor, therefore, cannot be permitted to be prosecuted.

6. On the other hand, on behalf of the complainant bank, learned advocate Shri Modi opposed the petition and submitted that the petitioner was a guarantor not only in the loan transaction noted above, but in two other transactions also and the entire outstanding dues have not been paid up. He submitted that essentially the question of criminal liability of the persons is involved including the petitioner and the investigation should be allowed to

be completed. He also drew my attention to a decision of the learned single Judge of this Court rendered in Criminal Misc. Application No.6547 of 2005 on 26.10.2005 wherein some of the other accused persons had sought quashing of the complaint which petition came to be dismissed by this Court.

7. Learned APP Shri Mengdey submitted that in the investigation carried out, there are prima facie reasons to believe that the petitioner had committed criminal offence. He placed reliance on a decision of the Apex Court in the case of **Inspector of Police v. B. Raja Gopal**, (2002) 9 SCC 533 wherein it was observed that merely because there was a compromise between the bank and the accused borrower, complaint of cheating cannot be quashed.

8. Having heard the learned advocates appearing for the parties and having perused the material on record, it is clear that in so far as the complaint against the petitioner is concerned, he is shown to have committed offence of cheating, etc. only with respect to one transaction of loan released by the Bank in which he was a guarantor. If there were other transactions between the parties, the same are not the subject matter of this complaint. Therefore, confining my discussion only to the allegations contained in the complaint, it would appear that for a sum of Rs.20 lacs loaned by the bank to the principal borrower, the petitioner as a guarantor had paid a sum of Rs.4 lacs in the year 2005 and

thereafter, the properties of the principal borrower were sold by the bank to realise the total sale price of Rs.67,16,500/-. Undisputedly, this amount is sufficient to cover the entire decree in so far as the loan transaction mentioned in the complaint is concerned. In that view of the matter, entire allegation that the loan was sanctioned without proper security or that the property offered by way of security by the principal borrower or guarantor would not have covered the risk of the bank cannot be accepted. The entire amount has been paid. The petitioner was not the principal borrower. As a guarantor, he has already paid a sum of Rs.4 lacs. The Bank had also filed a summary suit before lodging the complaint. The decision rendered by the learned single Judge in Criminal Misc. Application No.6547 of 2005 (supra) was rendered in the facts of that case. In the present case, I find that the peculiar facts of the case distinguish the case of the petitioner from others.

9. Considering all these aspects of the matter, insofar as the petitioner is concerned, the complaint bearing C.R.No.122/2005 is required to be and is hereby quashed. However, it is clarified that if there are other transactions in which the petitioner is involved outside of this complaint, it is always open for the Bank to proceed against the petitioner in civil or criminal proceedings, as may be available under law.

10. In the result, the petition is allowed

subject to the above observations. Rule is made absolute.

(Akil Kureshi, J.)

(vjn)